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Supreme Court, U.S.
FILED
DEC 30 1999
CLERK

No. 99-810

IN THE
**SUPREME COURT OF THE UNITED STATES**

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UNITED TRANSPORTATION UNION,
LOCAL 60, and DONALD J. BOGEN,

*Petitioners,*

v.

EUGENE RUOCCHIO, and
ROBERT A. D'ANGIOLILLO,

*Respondents.*

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**On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit**

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# MEMORANDUM IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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## QUESTIONS PRESENTED

1. Whether the Court of Appeals properly concluded that the action was not moot in light of the unredressed claim for damages.

2. Whether, given that the LMRDA free speech issues presented by Petitioners have not yet been resolved by the lower courts, review of those issues would be premature.

3. Whether unions may lawfully discipline their members for allegedly false speech or whether the sole avenue for recourse is a civil action for defamation.

## STATEMENT OF THE CASE

This controversy began when Eugene Ruocchio, an elected local union official, was charged by another union official, a political rival, with having violated Article 78 of the union's constitution which forbids members to "willfully circularize untrue statements" and mandates their expulsion if found guilty of doing so. Based on the filing of the charge, alone, Ruocchio was removed from his elective office pending trial.

Ruocchio and a fellow member and political supporter, Robert D'Angiolillo, then sued, *inter alia*, to enjoin Ruocchio's prosecution, to reinstate him, to obtain reimbursement of lost compensation, and to invalidate the challenged constitutional provision which had served as the predicate for his removal from office. The district court withheld relief pending exhaustion of the internal union disciplinary and appeal processes. However, when doing so, the court noted that "[t]hough not making a determination one way or the other at this time, the Court is compelled to note that it has serious reservations as to the validity of Article 78."

Months later, a local union trial committee found Ruocchio guilty. Subsequently, on appeal, the parent United Transportation Union ("UTU") overturned his conviction and ordered his reinstatement to office, seven months after his removal, and on the eve of having to respond to the plaintiffs' motion for summary judgment challenging its Constitution. The district court then summarily dismissed the action because, it concluded, Ruocchio's reinstatement rendered the entire case moot. A. 13, 50.

On appeal, the Third Circuit reversed because, *inter alia*, "there can be no question that Ruocchio's claim for monetary damages survives and is not moot." A. 13. In addition, the Circuit Court noted the many similarities between Ruocchio's case and *Mallick v. Int'l Bro. of*

*Electrical Wkrs*, 644 F.2d 228 (3rd Cir. 1981), and concluded that "[t]hese factors . . . lead us to the same conclusion that we reached in Mallick -- the District Court should have considered whether equitable and declaratory relief was appropriate" under the free speech guarantee of Title I, "Union Members Bill of Rights," of the Labor-Management Reporting and Disclosure Act of 1959 ("LMRDA"), 29 U.S.C. § 411(a)(2). A. 22. In doing so, the Court clarified that "[w]e do not decide whether Ruocchio is *entitled* to declaratory and injunctive *relief*; we hold only that the claims do have vitality before the District Court." A. 23 (emphasis in original).

Accordingly, the Circuit Court remanded for calculation and award, *inter alia*, of lost compensation and for determination whether Article 78 in the UTU Constitution infringes the free speech protection in LMRDA Title I, and for the award of appropriate relief in the event Article 78 were found to be unlawful. *See* 29 U.S.C. §§ 411(b), 412. The UTU then filed this Petition and persuaded the district court to stay further proceedings on remand pending its disposition.

## REASONS FOR DENYING THE WRIT

### I.

In its Petition for a Writ of Certiorari, the Union seeks to have this Court review the Circuit Court's discussion of the LMRDA's Title I free speech protection. At bottom, however, that discussion was mere *dictum* because the appellate court's *ratio decidendi* was that the case was not moot because requested relief, to which Ruocchio was entitled, had not been granted.[1] Accordingly, we respectfully

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[1] The Petition does not seek to have this Court review the mootness holding.

submit that it would be premature for this Court to review the appellate court's informal discussion of caselaw applicable to the Title I free speech rights of union members under the LMRDA until that caselaw has been definitively construed and applied to the facts of this case.

II.

In its Petition, the UTU contends that the Circuit Court's decision has drastically changed the equation for resolving free speech issues by suggesting that unions may not constitutionally forbid, and punish members for, defamatory speech. However, in a long and unbroken string of decisions, beginning with *Salzhandler v. Caputo*, 316 F.2d 445 (2d Cir.), *cert. denied*, 375 U.S. 946 (1963), the courts have uniformly held that LMRDA's Title I forbids unions to discipline members for their speech even if it is false, malicious, or libelous.[2] And in the decision below, the Third Circuit did no more than to recognize this body of caselaw and to remand this action to the district court to consider and apply it to the facts of this case.[3]

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[2] *See, e.g., Cole v. Hall*, 339 F.2d 881 (2d Cir. 1965); *Fulton Lodge, IAM v. Nix*, 415 F.2d 212 (5th Cir. 1969); *Semancik v. UMW*, 466 F.2d 144 (3rd Cir. 1972); *Keefe Bros. v. Teamsters Local 592*, 562 F.2d 298 (4th Cir. 1977); *Petramale v. Laborers Local 17*, 736 F.2d 13 (2d Cir. 1985); *Pearl v. Tarantola*, 361 F. Supp. 288, 292 (S.D.N.Y. 1973). *See also Kowaleviocz v. ILA Local 333*, 942 F.2d 285, 290 (4th Cir. 1991) (member may not be disciplined for profanity, "no matter how offensive"). It is this uniform and consistent body of law which the UTU seeks to have this Court overturn.

[3] The UTU's reliance on *Linn v. United Plant Guard Wkrs*, 383 U.S. 53 (1966), is misplaced. In *Linn*, this Court merely held that where either an employer or union circulates false and defamatory statements during a union-organizing campaign, the National Labor Relations Act does not bar the maintenance of a defamation action under state law provided the plaintiff pleads and proves the statements were made with malice. *See also* A-16, n.10.

III.

Lastly, the UTU contends in its Petition that the Circuit Court's discussion of Title I's free speech provision is contrary to *United Steelworkers v. Sadlowski*, 457 U.S. 102 (1982), where this Court upheld a union rule forbidding candidates for union office to accept contributions from nonmember "outsiders." In its opinion, the Court balanced the LMRDA's objective of fostering vigorous debate during union elections with the union's statutorily protected interest in preventing nonmembers from unduly influencing its internal union affairs. *Id.* at 115. When doing so, the Court noted that nonmember contributors possess no free speech right under the LMRDA. *Id.* at 113, n.6. And, while recognizing that the rule could have some impact on the scope of electoral debate, given that the Steelworkers "is a very large union whose members earn sufficient income to make campaign contributions," the Court determined that the impact would be minimal and accordingly found the rule to be reasonable. *Id.* at 114.

We submit that UTU is wildly off the mark when contending that: "analytically, *Sadlowski* and the present case are indistinguishable"; and, "Article 78 is no less a reasonable rule than that in *Sadlowski*." Petition at 11, 12. The UTU has not, and cannot, cite a countervailing, statutorily protected right or interest in prohibiting defamatory speech. To the contrary, as we have seen, the courts have uniformly held that the Title I "free speech" protection forbids unions to discipline members for speech, even when it is defamatory.

## CONCLUSION

For the foregoing reasons, respondents respectfully submit that the UTU has come forward with virtually no reason to support its Petition for a Writ of Certiorari which should, accordingly, be denied.

Respectfully submitted,

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